

REMARKS

Status of the Claims

The pending Office Action addresses and rejects claims 1-6, 8, 10-14, 16-18, and 27-55. At the outset, Applicant notes that the Office Action Summary does not list claim 15 as pending. Because the body of the Office Action addresses and rejects claim 15, Applicant will consider claim 15 as pending and respectfully requests the Examiner to correct Applicant if that is incorrect. Reconsideration is respectfully requested based on the above amendments and the following remarks.

Rejections Pursuant to 35 U.S.C. §102

Claims 1-6, 8, 10-14, 16, 17, 27, 29-48 and 51-53 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,676,666 of Oxland et al. ("Oxland"). Applicant respectfully disagrees.

Claims 1-6, 8, 10-14, 16, 17, 27, and 29-30

Independent claim 1 recites an elongate member having a proximal portion and a distal portion having a surface adapted to retract tissue. A guide member is coupled to the distal portion of the elongate member, and it has first and second pathways extending therethrough for receiving a tool, and a cut-out portion extending between the first and second pathways. The guide member is adapted to be positioned in relation to a spinal implant such that each of the pathways in the guide member is aligned with at least one corresponding bore formed in the spinal implant to guide a tool through the bore, and the cut-out portion provides visual access to the spinal implant.

Oxland does not disclose a guide member having first and second pathways extending therethrough with a cut-out portion extending between them, nor does Oxland disclose a cut-out portion providing visual access to a spinal implant. The Examiner states on pages 2-3 of the Office Action that the pathways in Oxland are "directed toward each other along a converging path. As such, a component of each opening faces toward the other and can be considered the 'cut-out' portions in communication with each other." However, this is not the case. An open end of a tube's

pathway is not a cut-out portion. It is merely the end of the tube. The cut-out portion in the Examiner's argument also does not *extend between* the pathways as recited in claim 1. Rather, each open end is entirely separate and distinct from one another. No cut-out portion exists, and there is certainly nothing between the two tubes of Oxland that is in communication. The Examiner and Applicant could each be holding a drinking straw directed towards one another along a converging path, but all the space between one open end of the Examiner's straw and one open end of the Applicant's straw does not make a cut-out portion extending between the pathways of the two straws. It also does not render the pathways within the straws in communication with each other. Under the Examiner's interpretation, the terms "cut-out portion" and "in communication" have no meaning and thus virtually every pathway in virtually every device would have cut-out portions extending between one other whether the pathways are part of the same device or not. That is clearly inaccurate.

Furthermore, the cut-out portion in Oxland does not provide visual access to a spinal implant. When tools are advanced through the guide members' pathways, the tools would occupy the space the Examiner argues as the cut-out portion when the tools exit the guide members' pathways and converge toward one another. A spinal implant could not be visible through the tools.

Accordingly, independent claim 1, as well as claims 2-6, 8, 10-14, 16, 17, 27, 29-30 which depend therefrom, distinguish over Oxland and represent allowable subject matter.

Claims 31-36

Independent claim 31 recites an elongate member having a proximal portion and a distal portion that is adapted to retract tissue. A guide member is coupled to the distal portion of the elongate member, and it is adapted to be juxtapositioned on a spinal implant. The guide member includes at least one pathway extending therethrough for receiving a tool, and at least one cut-out portion in a front sidewall of the guide member adapted to provide visual access to the spinal implant.

As explained above, Oxland does not disclose a cut-out portion that can provide visual access to a spinal implant. Moreover, Oxland's cut-out portion under the Examiner's interpretation

at best includes openings at the ends of the guide members which are clearly not in a front sidewall. They are merely the open distal ends of the tubes. Accordingly, independent claim 31, as well as claims 32-36 which depend therefrom, distinguish over Oxland and represent allowable subject matter.

Claims 37-39

Independent claim 37 recites first and second tissue retractor and guide devices adapted to couple to a spinal implant. The first and second devices have a guide member having opposed front and back sidewalls, opposed lateral sidewalls extending between the front and back sidewalls, and at least one pathway formed therein for receiving a tool. The first and second devices also have an elongate member having a proximal, handle portion, and a distal, tissue-retracting portion coupled to the back sidewall of the guide member. Claim 37 also recites a cross member removably connected to the first and second tissue retractor and guide devices.

Oxland does not disclose a cross member removably connected to first and second tissue retractor and guide devices. The Examiner asserts that the hinge in Oxland is a cross member, but Oxland makes no reference to a hinge. Oxland does include a pivot joint (66) that allows for adjustment of an angle between the guide members, but the pivot joint is integrally formed with the guide device and is clearly not removably connected to the guide device, much less removably connected to *two* guide devices. Oxland discloses *no* element removably connected to *two* guide devices. Accordingly, independent claim 37, as well as claims 38 and 39 which depend therefrom, distinguish over Oxland and represent allowable subject matter.

Claims 40-48 and 51-53

Independent claim 40 recites a spinal fixation plate having a superior portion with at least one bore formed therein for receiving a fixation device effective to mate the superior portion to a first vertebra, and an inferior portion with at least one bore formed therein for receiving a fixation device effective to mate the inferior portion to a second, adjacent vertebra. Claim 40 also recites at least one tissue retractor and guide device adapted to be juxtapositioned on the spinal fixation plate. The at least one tissue retractor and guide device has a guide member having opposed front and

back sidewalls, opposed lateral sidewalls extending between the front and back sidewalls, and first and second pathways formed therein for receiving a tool. At least a portion of the first and second pathways are in communication with one another. The at least one tissue retractor and guide device also has an elongate member having a proximal, handle portion, and a distal, tissue-retracting portion coupled to the back sidewall of the guide member. The at least one pathway in the guide member is aligned with a bore formed in the spinal fixation plate when the guide member is juxtapositioned on the spinal fixation plate.

Oxland does not disclose a guide member having first and second pathways in communication with one another. As discussed above, even if the pathways in Oxland are considered to be directed toward one another as the Examiner argues, the pathways are not in communication with each other. Otherwise, being “in communication” would be rendered meaningless since virtually every pathway in virtually every device, whether the same device or not, would be “in communication” with one another because space exists between them, which is clearly not true. Accordingly, independent claim 40, as well as claims 41- 48 and 51-53 which depend therefrom, distinguish over Oxland and represent allowable subject matter.

Rejections Pursuant to 35 U.S.C. §103

Claims 15, 18, 49, and 50 are rejected pursuant to 35 U.S.C. §103(a) as being made obvious Oxland in view of U.S. Patent No. 4,686,972 of Kurland (“Kurland”). As explained above, Oxland does not teach or even suggest all of the elements of independent claims 1 and 40. Kurland does not remedy the deficiencies of Oxland. Kurland is directed to a surgical femoral deflector and drilling guide and does not concern or even ever mention spinal implants or spinal fixation plates. Therefore, claims 15 and 18, which ultimately depend from claim 1, and claims 49 and 50, which ultimately depend from claim 40, distinguish over Oxland and Kurland, taken alone or combined, and represent allowable subject matter.

Conclusion

Applicant submits that all claims are in condition for allowance for at least the reasons discussed above, and allowance thereof is respectfully requested. The Examiner is encouraged to

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telephone the undersigned attorney for Applicant if such communication is deemed to expedite prosecution of this application..

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Respectfully submitted,

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